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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/526,071

02/28/2005

Rudiger Stendel

STENDEL1

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1444

7590

07/13/2006

BROWDY AND NEIMARK, P.L.L.C.

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WASHINGTON, DC 20001-5303

EXAMINER

NASSER, ROBERT L

ART UNIT

PAPER NUMBER

3735

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/526,071

Applicant(s)

STENDEL ET AL.

Examiner

Robert L. Nasser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 16 and 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear what the energies inherently occurring in the body are. In addition, it is unclear how they are used by the electronics unit.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Penn et al 6731976. Penn shows a device with a base plate 42 and a semi-flexible cover, i.e. the top portion of the housing 46 covers the proximal assembly to the outside, is fastened to the skull with screws (see page 9, line 14), where the sensor unit is centered on a fastening element 52. The sensor is connected to the electronics unit (see figure 11). It is not clear what type of connection this is. The examiner takes

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official notice that it would have been obvious to use a micro plug, as it is merely the substitution of one known connector for another. Claim 10 is rejected in that the overall design is "modular." Claim 11 is rejected in that the electronics include a power source 64 or 76, a transmitter 60, a receiver 20, and a control unit, 18. Claim 12 is rejected in that the catheter is made from a polymer (see column 5, line 40-42) and the sensor measures pressure. Claim 13 is rejected in that the "drainage" lumen is optional and the catheter has a lumen for the pressure sensor. Claim 14 is rejected in that when a drainage catheter is present, it is connected to an abdominal catheter through the base plate. See figures 18-20 and their discussion (control unit 104 is connected to a peritoneal catheter and to the sensor 16). Claim 15 is rejected in that the electronics are sterilizable and reuseable.

Claims 13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Penn et al 6731976 in view of Heitzmann 5957912. Penn shows a device with a base plate 42 and a semi-flexible cover, i.e. the top portion of the housing 46 covers the proximal assembly to the outside, is fastened to the skull with screws (see page 9, line 14), where the sensor unit is centered on a fastening element 52. The sensor is connected to the electronics unit (see figure 11). It is not clear what type of connection this is. The examiner takes official notice that it would have been obvious to use a micro plug, as it is merely the substitution of one known connector for another. In addition, the catheter is made from a polymer (see column 5, line 40-42) and the sensor measures pressure. For drainage of excess CSF, Penn uses a separate drainage catheter. Heitzmann teaches that adding a second drainage lumen is more desirable

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then a second catheter, because it reduces the risk of infection to the patient (see column 1, line s53-58). Hence, it would have been obvious to modify Penn to include a drainage lumen, to lower the risk of infection.

Applicant's arguments filed 4/18/2006 have been fully considered but they are not persuasive.

Applicant has asserted that the endogenous energy issue has been resolved. It is the examiner's position that it is unclear what "energies" are inherently present in the body and how they are used by the electronics unit.

Applicant has asserted that the Penn does not have the cover covering the proximal unit to the outside. It is the examiner's position that the top of element 46 covers the proximal unit to the extent recited in the claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

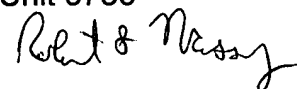
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is 571 272-4731. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RLN
June 29, 2006

Robert L. Nasser
Primary Examiner
Art Unit 3735



ROBERT L. NASSER
PRIMARY EXAMINER

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